

No. 49625-9-II

**COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON**

HAFID TAHRAOUI,

Appellant

v.

FRANKLIN BROWN, ET AL.,

Respondents.

APPELLANT'S REPLY BRIEF

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A. ARGUMENTS

Respondents' motion for summary judgments raised only the issue of whether probable cause exists to maintain a claim for malicious prosecution. The motion did not raise issues regarding the other four elements necessary to prove said claim. Therefore this appeal addresses only the issue of probable cause. In addition, Tahraoui provided some facts that show Respondents had malice against him.

1. Respondents misrepresented material facts to prejudice Tahraoui and mislead this Court

As a preliminary matter, this Court should take notice of the followings material facts misrepresented by the respondents in their response brief:

Respondents stated: "On May 23, 2008, Minion called Tahraoui to try to get his side of the story, as well as to advise Tahraoui that Minion was preparing to send the case file to the Prosecutor's office for charging determination." CP 46. (Resp. Brief p. 5)

Contrary to the above statement of fact by Respondent, Minion, in his second report, wrote: "On 5-23-08 at 1000 hours I called Hafid to attempt to get his side of the story as well as advise

him that I was preparing to send the case file to the Prosecutor's Office to file charges. After leaving a message I began to work on the charging sheet for the prosecutor when I received a telephone call from Hafid.” (See Resp. Appendix 11)

Here, the police report by Minion clearly shows that Minion did not ask the Prosecutor to make a determination whether Tahraoui should be charged or not, instead Minion filled a charging sheet, requesting from the prosecutor to file charges against Tahraoui.

Minion also wrote: “I told Hafid that the stories by Pate, Brown, and Lt. Wilder were much different from his and that I was still going to have to submit the case to the prosecutor for charging. (See Resp. App 12)

2. Respondents were the primary responsible for the filing of charges against Tahraoui

Respondents falsely argue that they had no role in the filing of charges against Tahraoui,

It is well known and common procedure that police agency is the one who makes the determination whether a crime has accrued and whether to request from Prosecutor to file charges. Once an incident is reported and the police decide not to seek charges, the

case will be closed and not forwarded to the Prosecutor. In most cases, the prosecutor will follow the police recommendation regarding the filing of charges.

In the case at bar, the theft allegation by Pate is very minor offence, which does not require the Prosecutor to question whether the Respondents conducted a fair and full investigation. The Prosecutor has no choice but to accept the police report as provided by Respondents and rely on their findings, since it does not have the resources to conduct its own investigation.

3. Respondents failed to address the specific material facts, raised by Tahraoui, which preclude the grant of summary judgment

Contrary to Respondents' claim, Tahraoui raised several issues of material facts in his brief, namely:

a. Tahraoui claimed that Brown did not act in good faith, was bias in his investigation and falsely accused Tahraoui of theft

In his sworn declaration, Tahraoui declared and stated the followings:

"i. At 12:01 p.m., Defendant Brown arrived at Pate's house.

ii. At 12:07 p.m., less than 6 minute after arriving at Pate's house and without conducting an investigation in good faith or a meaningful one, Brown called and left a message for me threatening to arrest me in very quick

manner if I did not return the hitch to Pate immediately. Brown said in his message:

“Hafid, this is Deputy Brown with the Pierce County Sheriff’s Department. You took the trailer hitch from Eric (Pate) from his house. I’ll bet that you will return the hitch before I get my hand on you and put you in the Pierce County Jail. If you want to contact me call 911 and ask for Deputy Brown”.

iii. At 12:14 p.m., shocked and frighten after hearing Brown’s message. I called Brown immediately and tried to explain to him that I bought the hitch and he (Brown) should hear my side of the story before deciding to arrest me for something I did not do. Brown told me that I must return the hitch before he catches me and put me in the Pierce County Jail. Also, I tried to remind Brown that a warrant or probable cause is needed for my arrest. However, Brown responded that he does not need anything to arrest me. To prove his point, Brown asked for my address so he can come to my home and arrest me but I refused to provide him an answer.” (See Declaration of Hafid Tahraoui CP at132)

Respondents did not deny in their response brief, or at the trial court, the above statements made by Tahraoui. Therefore, it is possible for a jury to believe Tahraoui was telling the truth. A jury could find that a prudent office would not be able to conclude that Tahraoui committed theft or should be arrested based on 2 or 3 minutes conversation with Pate who was not present at the time of the alleged theft. Furthermore, a prudent officer searching for the truth, would want to hear Tahraoui side of the story regarding the accusation made by Pate to evaluate the truthfulness of the parties.

In these circumstances, a jury could conclude that Brown

acted in bad faith in his investigation, and had malice toward Tahraoui, and disregarded his right. In addition, Brown made a false representation to the prosecutor that Tahraoui committed theft which resulted in the filing of charges against Tahraoui.

- b. Tahraoui claimed that Wilder did not act in good faith in his investigation, retaliated against him and falsely accused him with theft

In his sworn declaration, Tahraoui declared and stated the followings:

- i. Afterward, and according to the police report, Wilder setup a ruse to arrest Tahraoui. He telephoned Tahraoui and asked him to come down to the South Hill precinct and fill out a statement about his complaint. Tahraoui become suspicious and asked wilder if he is going to be arrested. At first, Wilder try to hide his intention, but few minutes after, he informed Tahraoui that his is facing arrest for multiple crimes including theft and extortion. Wilder told Tahraoui that he was lying in his complaint and Brown had every right to arrest him.
- ii. Without any further investigation, and less than 30 hours after the theft claim, Wilder recommended to the Pierce County Prosecutor's office to charge Tahraoui with felony in Superior Court, even though the hitch is not worth more than \$100. However the prosecutor's office declined to do so." (See Declaration of Hafid Tahraoui CP at133)

Again, Respondents did not deny any of the above statements made by Tahraoui and specifically the fact that Wilder forwarded the case to the Prosecutor the day after Tahraoui complained about Brown actions. Wilder asked the prosecutor to

file felony charges against Tahraoui. The Prosecutor declined to file felony for a minor theft and forwarded the case to the misdemeanor unit.

Wilder made a decision that Tahraoui committed theft and should be arrested, based solely on Brown's determination that probable cause exist for theft. Since, Brown's determination was wrong and unfair; Wilder's decision is also wrong and unfair. In addition, Wilder acted in bad faith when he forwarded the case to the Prosecutor for charging few hours after Tahraoui's complaint without any meaningful investigation.

4. Minion's failure to advise the Prosecutor of the absence of probable cause, and not to file charges against Tahraoui, is an issue of material fact that should be resolved at trial

Respondents argue that Minion's nondisclosure that probable cause did not exist that Tahraoui committed theft is immaterial because Tahraoui side of the story could not be verified and "Pate never recanted his original statements." (Resp. Brief p. 21).

Respondents' argument has no merit and should be rejected because Minion's investigation is bias.

Here, Pate accused Tahraoui of theft and shortly after he disappeared, where as Tahraoui made him self available for questioning after denying all allegations against him and did not disappear.

Because of bad faith and bias, Minion decided that Pate was telling the truth regardless of the fact that Pate had disappeared and refused to answer Minion's call so to verify his story. On the other side however, Minion declared that Tahraoui story could not be verified and should be charged with theft even though Tahraoui refuted all Pate allegations and was available for any questioning.

In this situation, a jury could find that Minion did not act in good faith and was biased in his investigation because a reasonable and prudent detective will not disbelieve Tahraoui, who provided a plausible explanation on how he acquired the hitch, and made himself available for examination, and just blindly believe Pate who disappeared, did not want to answer any follow-up questions regarding his statement. The burden is on Pate to prove that Tahraoui stole the hitch, not the other way around.

Furthermore, a jury could find that Minion failed to advise the Prosecutor that probable cause did not exist that Tahraoui committed theft and charges should not be filed in this matter. Even after

Tahraoui refuted all accusations against him and Pate refused to return Minion's calls, Minion still requested from the Prosecutor to file charges.

In his last report, Minion Wrote: “

“He refuses to return my calls and is believed to be living out of state at this time. This case is closed because of lack of victim cooperation.”

“I am closing this casedue to the lake of interest by the victim” (See Resp. APP 13-14)

The report makes it clear that Minion never retracted his finding that Tahraoui stole the hitch after Pate refused to return his call. Instead, Minion explained that he is closing this case because of “lack of interest by the victim”. (See Resp. APP 14)

This last report by Minion did not advise the Prosecutor that Pate's allegation should be rejected, or at least could not be verified because Pate refused cooperation, thus charges are not warranted in this cast. The report as written by Minion, convey the message that Tahraoui committed theft, Pate, however, was not interested in pursuing his claim against Tahraoui.

The Prosecutor filed charges against Tahraoui based on the previous 4 police reports which made it clear that Tahraoui stole the trailer hitch and refused to give it back. The Prosecutor had no reason to believe that Respondent acted in bad faith or failed to

provide him with full and fair relevant facts in this case. Consequently, the Prosecutor had no choice but to file charges against Tahraoui.

5. The Prosecutor dismissed charges against Tahraoui because of Facts showing Respondents acted in bad Faith and failed to make a fair and full disclosure of relevant facts known to them

During the proceeding of the criminal case, Tahraoui was able to provide the Prosecutor with evidence showing Brown acted in bad faith and had malice toward Tahraoui. Specifically, Brown decided to arrest Tahraoui for theft based on Pate statement and without giving Tahraoui a chance to present his side of the story. Tahraoui provided the Prosecutor with a time table for the event that proves Brown was not truthful in his report.

Also Tahraoui was able to convince the Prosecutor that Wilder and Minion did not conduct an independent investigation, instead they relied entirely on Brown's investigation to conclude that Tahraoui committed theft. Consequently, the Prosecutor decided that probable did not exit to charge Tahraoui with theft.

6. Respondents should not be entitled to attorneys fees and cost when they failed to raise the issue before the case was dismissed

The grant of attorney's fees and costs is not an automatic award to the prevailing party if not requested and raised as a separate issue before the case get decided. Respondents did not raise the issue of fees and cost at the motion for summary judgment thereby depriving Tahraoui of his right to notice on the issue before the case was dismissed. Therefore Respondents should not be entitles to fees and costs.

7. Respondents are not entitled to jury fee as cost

Respondents failed to provide any meaningful argument to why they entitled to jury fee as cost under 4.84.010(1). The statute makes it clear that costs include the filling fees and others fees specifically named; however it did not include the jury fee. If the legislator wanted the jury fee as cost under 4.84.010 (1), it would have said so. Consequently, Respondents should not be awarded jury fees as cost.

B. CONCLUSION

Material issues of facts still exist, thus summary judgment is improper in this case. This Court should reverse the trial court decision.

Dated this 14th day of August, 2017.

Respectfully submitted,

Signed Hafid Tahraoui

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DECLARATION OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on August 14, 2017, I caused to be served true and correct copy of the following document:

- Appellant's reply brief

to the counsel of the record listed below via email

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Dated this 14th day of August, 2017.

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